he has been put by this litigation. As to any damages beyond that, if he has suffered any, we think that he ought not to recover them in this suit, as he, or the sheriff for his benefit, had an option to bring an action of trespass for damages, instead of resorting to a court of equity for relief. Damages are allowed, it is true, in certain cases, as incidental to other relief; but even if they could, in strictness, be awarded in this suit, we do not think that the case is such as to call for the interposition of the court in directing an inquiry as to damages.

The decree must be reversed, with directions to the court below to proceed in the cause in conformity with this opinion.

Supreme Court of Tennessee.

J. M. HUDSON ET AL. *v.* S. Y. BINGHAM ET AL.

A discharge under the Bankrupt Act of 1867, by a Bankruptcy Court having jurisdiction, when properly pleaded in bar to a suit in a state court, whether of law or equity, is conclusive, and cannot be attacked for fraud in obtaining it.

A material fact in a suit either at law or in equity cannot be put in issue by a notice that it will be contested at the trial; it must be regularly pleaded.

THIS was a bill in equity, filed by complainants, as creditors of S. Y. Bingham, seeking to set aside two deeds conveying tracts of land to defendant, Harris, on the ground that they were made to hinder and delay the creditors of Bingham, and were therefore fraudulent and void. The defendants answered, denying all fraud, and insisting on the *bona fides* of these conveyances. In addition to this denial, Bingham, in his answer, set up as a defence to a recovery on the debts sought to be enforced, his discharge in bankruptcy, granted by the District Court of the United States for West Tennessee.

This answer was filed June 8th 1871, and on December 12th 1871, complainants caused a notice to be served on said Bingham, and filed in the cause, that on the hearing in the Chancery Court at Huntingdon, the complainants would insist that the discharge in bankruptcy was invalid, by reason of a fraudulent withholding of a true statement of the property and assets of said Bingham, from the schedule required to be filed by him with his petition for bankruptcy, and other acts specified in the Act of Congress, which might have been urged as a reason for withholding said discharge in the District Court, or for annulling said discharge within two years after its date, on proper proceedings, as required by the Bankrupt Law of 1867.

The opinion of the court was delivered by

FREEMAN, J.—Before proceeding to discuss the main question debated so earnestly before us, it is proper to say that we know of no rule

of law, or of practice or pleading in our state by which a material fact involved in the decision of a case in the Chancery Court, can be put in issue upon a notice given to a party, that such fact will be contested on the hearing of the cause. The defendant had presented his defence to the decree sought against him, in his answer, and had tendered therewith the evidence of such defence, complete in form, and *primâ facie* conclusive in his favor in any aspect of the question—in the form of the record of a decree made by a court of competent and even of exclusive jurisdiction to adjudge the matters purporting to have been adjudged by that decree. We need but say that the notice referred to can be of no importance in this case, as it is not a pleading, and on its allegation no issue has been or could be made.

The case, then, presents the simple question as to whether, when a defendant presents by way of defence to a demand sought to be enforced against him, in a state court, the plea of a formal discharge in bankruptcy, the complainant in a case in the Chancery Court can defeat the conclusive effect of the adjudication in the bankrupt proceedings, by showing by proof that there was a violation of the requirements of the Bankrupt Act of 1867, in withholding a full statement of his property in his schedule required to be furnished by the act with his petition, or for any of the causes set down in said act. It will be seen, by this statement of the question, that we must look to the proof, and not to any allegations of any pleadings, to see what the ground of attack on the validity of this judgment is—not a very satisfactory mode of investigating the question, to say the least of it.

Waiving these matters, however, we proceed to examine the question pressed on our attention by counsel. We may say that a majority of the court have in at least two cases, one at Knoxville and the other at Nashville, within the last twelve months, adjudged the question presented, and laid down the rule that the discharge of a bankrupt could not be attacked collaterally in a state court for the cause referred to; but inasmuch as the case is earnestly pressed on us, we review the question, premising that after two adjudications of the question in which it was seriously investigated, we ought not only to be convinced that our former views were erroneous, but that they were clearly so injurious to the rights of parties and detrimental to sound policy, that the rule should be changed, before we can consent to overrule our own decisions. In order to a proper understanding of the question involved, it is proper to ascertain with some distinctness what is the nature and character of the proceedings in bankruptcy, and what are the matters involved in such a suit, and what the character of the jurisdiction exercised in such proceeding by the District Court of the United States. It is obvious that the proceeding is one of peculiar character, having in it elements not found in the ordinary proceedings of our courts, either state or federal. The character of this proceeding may be perhaps better seen by considering the general purpose of the law in connection with the precise provisions of the Act of Congress for the carrying out of that purpose. As said by Mr. Bump, p. 172, the best author we have on this subject at present, "The great object of all bankrupt or insolvent laws is to distribute the property of a debtor, who is unable to pay his debts in full, among his creditors (and we may add among *all* his creditors), by judicial proceedings in which all may be heard, and to discharge

his property afterwards, or at least his person, from the debts owed by him at the time of the institution of such proceedings." The Bankrupt Law of 1867 evidently contemplates this, and we may sum up its purpose as shown by its various provisions, to be what the certificate of discharge on its face purports it to be, as prescribed by the 23d section of the act, a decree or judgment of the court that the party "be for ever discharged from all debts and claims which by said act are made provable against his estate, and which existed on the day the petition for adjudication was filed." In other words, taking the Bankrupt Law of 1867 in its full scope, the proceeding under it is a suit by the party petitioning (where it is a case of voluntary bankruptcy), against all his creditors, with certain exceptions named in the act, in which the petitioner seeks, by the judgment of the District Court of the United States, to be for ever discharged from all his debts, which are provable against his estate by the provisions of the law of Congress, and which exist at the time of filing his petition. This is the plain and well-defined object of the proceeding, and all the regulations prescribed in the statute for the conduct of the suit thus commenced are intended to effectuate this end, and at the same time give such creditors who are to be defendants to this suit ample means of proving their claims, and sharing in the final disposition of the estate of the bankrupt *pro rata*, according to the amount of their debts. In order to carry out the purpose of the law, it is provided that the petitioner shall annex to his petition a schedule or oath, containing a full and true statement of *all his debts, and as far as possible* to whom due, with the place of residence of each creditor, if known to the debtor, and the sum due from him—in a word, a full list of the parties against whom the suit is brought, as far as practicable: Sect. 11, Act of 1867.

It will be seen, however, from this and other provisions, that absolute accuracy in this matter is not required, for it is to be done as far as practicable. Notice of the filing of this application or petition is to be published in such newspaper as may be designated, and the marshal is under an order provided for "to serve written or printed notice, by mail or personally, on all creditors upon the schedule filed with the petition, or whose name may be given to him in addition by the debtor, which notice shall specify, among other things, the issuing of the warrant in bankruptcy against the estate of the bankrupt, and that a meeting of the creditors, giving name and residence and amounts, so far as known, to prove their debts, and choose an assignee of the estate, will be held at a time fixed in the notice. These provisions show the character of the proceeding to be such as we have indicated, and that all the creditors, so far as known, are to be made parties by actual notice, and, as we think, the publication in the newspaper was clearly intended to apply to those not known, or whose residence was not known. This being the character of the proceeding, the judgment of discharge by its terms is an adjudication of the question involved in the suit, and is between the petitioner and all the defendants, his creditors, a decree binding and conclusive on all who are made parties in accordance with the provisions of the act; or, in the language of the decree of discharge, is an adjudication that "he is discharged from all debts and claims which by said act are made provable against his estate, which existed at the commencement of the suit." In this view of the

question, upon a principle of universal recognition, the judgment of a court of competent jurisdiction is conclusive of all matters adjudged as between parties to that suit, and cannot be collaterally attacked or questioned before any other tribunal. We need cite no authority for this proposition. It is axiomatic. This being so, it follows that, unless the complainants can show that they are excepted from the operation of this rule by some well-settled principle of law, the decree of bankruptcy is and must be conclusive as to them as to their debt, it being in existence at the commencement of the bankrupt suit, and a debt provable under said proceedings. This view would seem conclusive of the question on principle, but the case is still stronger. Under the Bankrupt Law of 1841,—which, in its general features, was precisely the same as that of 1867—it was held by the Supreme Court of the United States, in the case of *Shawhan* v. *Wherritt*, 7 How. 331: "The public notice required by the act to be given having been made, the creditors must be treated as having notice of the proceedings, and an opportunity to make objections to them, and having neglected or refused so to do, they ought not to be allowed to impeach them collaterally, as they are in the nature of proceedings *in rem* before a court of record having jurisdiction. This being so, it is well settled that in a proceeding *in rem*, or in its nature, the decree is conclusive against all parties having the right under the proceeding to control the decree. This is a universal principle, with no exception, so far as we have been able to see. If this be the correct view of the question—and being by the Supreme Court of the United States it is conclusive on us—then the question before us does not admit of doubt, and the decree in bankruptcy is conclusive as against a collateral attack on it. We are aware that several state courts, among them our own, held, under the Act of 1841, in construing the clause as to the effect of the discharge, making it subject to attack in our courts, that it might be avoided by showing fraudulent concealment of property. We doubt very much the correctness of that view under that act. It suffices to say, that it was never so held by the Supreme Court of the United States; and the principle laid down in the above case would indicate that no such doctrine would have been maintained by that court had the question been brought before it. However, the language of the clause as to the effect of the discharge, in the Act of 1841 and 1867, is entirely different, and does not admit of the same construction, as we shall show in an afterpart of this opinion.

In addition to the above, however, the conclusive effect, on general principles, of such a decree is strengthened by the fact of the jurisdiction exercised by the Federal court, and the exclusive control which the Federal government has over this peculiar question of bankruptcy. Sect. 8 of article 1 of Constitution of United States, in defining the legislative power of the Federal government is, among other things, "The Congress shall have power to establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcy throughout the United States." Since the great leading case of *Sturgis* v. *Crowningshield*, 4 Wh. 122, decided in 1819, and the opinion of MARSHALL, Chief Justice, in that case, it has been settled with almost perfect unanimity, that this power is so far exclusive in the Federal government, that when exercised by the passage of a law regulating bankruptcies, it is inconsistent and incompatible with

the exercise of a similar power by the states. In pursuance of this view, it is settled beyond dispute, by an overruling weight of adjudication, both state and Federal, that the moment a bankrupt law of the United States goes into operation, all state insolvent laws, become inoperative and are suspended: See case of *Reynolds*, 8 R. I. 485, where the cases on this question are cited. This being so, it is clear that the jurisdiction of the District Courts of the United States over the whole question of bankruptcy, is exclusive, as being the exercise of a power granted to the Federal government alone, and the administration of a remedy given or suit brought in pursuance of, and under a statute of the United States, which no state court can be called on to administer, and over which it has no control. The power conferred by the Constitution on Congress on the subject of bankruptcy, has been exercised by that body in the passage of the Act of 1867, and the machinery for carrying out its purpose has been confided exclusively by Congress to the courts of its own government, as was proper should be done. In this view of the case, to hold that the decree of courts having this exclusive jurisdiction could be set aside by a collateral attack on them, and proof of matters, which if shown in the suit in those courts would have prevented the decree from being rendered, would be so far in violation of all principle, that we opine no judicial mind would entertain it as a serious proposition for a single moment. To the state court this decree of the Federal courts stands as the decree of a tribunal having complete and exclusive jurisdiction over the whole question to settle and adjudge all matters involved in the proceeding, and unless void on its face it can never be attacked or disregarded. In such cases the regularity of the proceedings is presumed, jurisdiction confers the power to render the judgment, and no irregularity in the forms of proceeding will affect its validity, and it is binding until set aside in the court in which it was rendered: *Dolson* v. *Pierce*, 12 New York 156; *Kinnier* v. *Kinnier*, 45 Id. 535, and cases cited. This being so, and in connection with the other principles we have laid down, it is beyond question, that the decree of the District Court is conclusive on general principles, unless the power is given to a state court by the act itself to declare it inconclusive and void, or unless by the law of Congress, it is not made conclusive in its effect, as in case of other decrees and judgments of courts of general jurisdiction.

We proceed now to examine the law of Congress itself, to see what is the effect of this discharge in bankruptcy by its provisions? It must be remembered that the law of Congress is directed to the action of the Federal courts, contemplates proceedings in them, and prescribes the mode of their action exclusively. That Congress by virtue of its exclusive control over the whole question, has the power to declare the effect of the discharge which shall be granted by the decree of its courts, is not questioned by any one. We turn to the language of the law to see what that effect is, as declared by the Federal legislature which enacted the law: By sect. 34 of the act of 1867, it is provided: "that a discharge duly granted under this act, shall, with the exceptions aforesaid, release the bankrupt from all debts, claims, liabilities and demands which were or might have been proved against his estate in bankruptcy, and may be pleaded by a simple averment, that on the day of its date, such discharge was granted to him, setting the same forth in *hæc verba*

as a full and complete bar to all suits brought on any such debts, claims, liabilities or demands, and the certificate shall be conclusive evidence in favor of such bankrupt of the *fact* and the regularity of such discharge," that is, that the decree has been rendered, and the proceedings were regularly conducted. This portion of the section admits of but one construction, and makes the discharge in accordance with general provisions of law, conclusive as in other judgments and decrees of courts of competent jurisdiction. It applies to the effect of this discharge in any and all courts, where the party may be *sued* or impleaded to recover and enforce such debts, for it provides how it shall be *pleaded* in defence to such suits, and its effect in such cases, where the claims are sought to be enforced by such a suit. This feature of this clause we think has been overlooked generally in the discussion we have seen as to the effect of the discharge; that is, the fact that this clause applies specifically to the effect that shall be given to the discharge by any and all courts in which suits should be brought to enforce any debts which were or might have been proved against the estate of the bankrupt in the bankruptcy suit. It makes the discharge conclusive as a plea in all such cases, if language can do so, and to this effect in such suits there is no exceptionable provision in the statute. Then follows a proviso, however, for the benefit of such creditors, in this language: "*Always provided*, that any creditor or creditors of said bankrupt, &c., who shall see fit to contest the validity of said discharge, on the ground that it was fraudulently obtained, may at any time within two years after the date thereof, apply to the court which granted it, to set aside and annul the same." It then goes on to regulate the mode of procedure in such cases, and what judgment shall be rendered by the court. It further provides, that if the fraudulent acts alleged are not proved, or if the court shall find that they were known to the creditor before the discharge granted, the judgment shall be rendered in favor of the bankrupt, and the validity of his discharge shall not be affected. Here is a mode of attacking the validity of a discharge and having it annulled, provided by the act itself, by which the previous conclusive effect of the discharge, given by the first part of the section, is or may be avoided. It is not provided, however, as we are called on to decide here, that notwithstanding this conclusive effect, provided for, it nevertheless may be shown to have been fraudulently obtained in all cases when interposed by plea in accordance with the statute, nor that this may be shown by proof to avoid the conclusive effect of such discharge. That this was not intended to be done is strengthened by the fact that the Congress of the United States had passed several similar laws before this, which had been administered and construed by the courts of the country. The last, passed in 1841, had a provision that was in precise accord with the views maintained by counsel in this case. It was as follows: "Such discharge, when duly granted, shall in all courts of justice, be deemed a full and complete discharge of all debts, &c., which are provable under this act, and shall and may be pleaded as full and complete bar to all suits brought in any court or judicature whatever, and the same shall be conclusive evidence of itself in favor of such bankrupt, *unless* the same shall be impeached for some fraud or wilful concealment by him of his property, &c., contrary to the provisions of this act." The proviso here is for impeaching it in all courts,

or was so construed, but in Act of 1867 is for annulling it only by the proceeding there given. This provision is entirely different in its terms and purpose from the Act of 1867, and unless we hold that the latter act by the use of different language, definitely and clearly expressing a contrary purpose, intended to provide for the same thing as the Act of 1841, we must conclude no such effect was intended, as contended for in this case. The debates in Congress show, we believe, that the purpose was as we have construed it, and to establish a different rule from that of the Act of 1841.

Several other sections of the Bankrupt Law are referred to, however, as sustaining the views contended for, some of which we notice. 1st. The 21st section is urged, which in the first clause, only provides that no creditor proving his debt or claim, shall be allowed to maintain any suit at law or in equity therefor against the bankrupt, but shall be deemed to have waived all right of action, &c. Without critically examining this clause, we need but say, that, taken in connection with the balance of the section, it has no application whatever to the effect of a discharge, but only to the right to prosecute or bring suits against the bankrupt during the pendency of the bankrupt proceedings, as is shown by subsequent parts of the section providing for such suits being continued by leave of the Bankrupt Court to the point of a judgment, and then the debt proven against the bankrupt's estate. The construction contended for by the counsel would involve the absurd conclusion, that the whole effect of the bankrupt proceedings might be avoided at the option of any and every creditor, by a simple refusal to prove his debt. If this was the true construction of the law, then it would render its provisions entirely nugatory, for no creditor under such circumstances would ever come in, but only wait and take his chances by diligence to secure his own debt in his own way, and not to share in distribution of assets of his creditor *pro ratâ* with all his other creditors. Such would be the result of the proposition of counsel in this case which is, "that a creditor who has not proven his debt may bring his suit in any court of law or equity, notwithstanding the discharge granted, the section applies only to the bringing or prosecuting suits pending the proceedings, any one may bring suits after the discharge, and the law does not interfere to prevent it, and he may have a judgment, if the bankrupt chooses to waive the benefit of his discharge, and not interpose it for his protection. But if he pleads it, then the law says it shall be a complete bar to all suits brought on such debts as "were proven or might have been proven against the bankrupt's estate." We may dispose of these arguments by reference to the general provisions of sect. 29, which furnish the strongest support to the views maintained. This section is the one which provides for granting the discharge, fixes the time when it shall be granted, the notice to be given to creditors, and the terms on which the court shall grant it. It provides alone for the action of the District Court in proceeding in bankruptcy, and has no reference to suits brought after the discharge, or suits to enforce claims, which were proven or might have been proven against the estate—as sect. 34 does. It says to the Bankrupt Court, no discharge shall be granted, or if granted valid, in certain cases, or on certain facts being shown to said court, and in conclusion of the section, requires the bankrupt to take an oath, that he has not done or been

privy to any act, matter or thing specified in this act as a ground for withholding the discharge, or as invalidating it, if granted. The next section 30, provides that no person shall be granted a discharge, who had previously been discharged under this act, except under certain conditions.

The 31st section then provides for any creditor opposing the discharge, filing his specifications in writing of the grounds of his opposition, and for the court ordering any question of fact so presented to be tried at any session of the court. The 32d section then enacts that if it shall appear to the court that the bankrupt has in all things conformed to his duty under the act, and that he is entitled to receive his discharge from all his debts, with the exceptions specified, the court shall grant him the certificate which is provided for, and which we have quoted. It is obvious from this summary of the sections and their provisions, that they are all intended to be brought into operation, and bear on the question of granting the discharge by the court, and provide for proceedings to be had before the same is granted. Then follows after the form of the discharge, the provision section 33, exempting certain debts from the effect of the discharge so granted; and then the section which we have before quoted and commented on, as to the conclusive effect of the discharge in cases where suits are brought on debts proven or provable, and the *proviso*, giving the only means of defeating or avoiding this conclusive bar, thus provided by the state, against such suits. This proviso contains the only provision of the law of Congress by which this conclusive effect is to be prevented on such debts, and that is by having the decree granting it annulled and set aside on proceedings regularly instituted for the purpose, within two years from the time of granting it. It will be further seen from the language of the section immediately preceding the discharge, that the court is required to then adjudicate the question, as to whether the bankrupt has in all things conformed to his duty under this act, and in view of this investigation is entitled to his discharge. In addition the discharge itself recites the fact on its face, that the party has been duly adjudged a bankrupt, and *appears to have* conformed to all the requirements of law in that behalf, and *therefore* it is ordered by the court that he be for ever discharged from all debts, &c. So that it appears clearly that the act contemplates all these facts to have been investigated and adjudged by the discharge. This would have been conclusive on all creditors having proven, or who had provable debts, on general principles; therefore the subsequent section removes this difficulty by defining the effect of this discharge, and providing how it may be defeated by proceeding instituted for the purpose within two years. This, it seems to us, is the plain, obvious construction of the statute, when closely examined, and harmonizes it with the nature of the proceeding, and general object and purpose of all such laws, and especially with the whole purview of the whole Act of 1867.

Such has been the almost uniform holding of all the courts before which this question has come. They have uniformly, with but one exception only which we have seen, in Connecticut, held that the authority to declare a discharge void in a state court, is incompatible with the jurisdiction conferred on the Federal District Courts on this subject, and we think on the soundest reasons. See *Corey* v. *Rip-*

ley, 57 Maine 69; *Oates's Adm'r* v. *Parish*, 47 Ala. 157. Mr. Bump, in his work on Bankruptcy, p. 243, says this is the sounder view of the question. He says: "the power conferred on the Court of Bankruptcy to annul a discharge is exclusive, and the discharge, like any other judgment, cannot be impeached, when brought in question in a collateral action by any party who has been properly notified of the pendency of the proceedings in bankruptcy. The statute, it is true, declares in section 29 that the discharge, if granted, shall not be valid if the bankrupt has committed any of the acts which would constitute valid grounds for withholding it; but this evidently contemplates the means subsequently provided for annulling it." If this were not so, he adds, "it would be idle to summon creditors into a special court to set up objections which could be alleged and tried equally as well in any court. There must, moreover, be an end of litigation, a time beyond which contains facts cannot be contested. The necessity of meeting and contesting them in every court in which the discharge may be pleaded is a hardship Congress never intended to impose upon the bankrupt, and is, moreover, so flagrantly unjust and contrary to all the ordinary principles of jurisprudence, that nothing but the imperative demand of the statute could justify or warrant such a construction." This view of the question is certainly one having great force of reason in it. In addition, we add other reasons, which we think strengthen this conclusion. It seems to us that such a power would be inconsistent with the exclusive jurisdiction of the whole subject by the Federal government and render such a discharge and decree of these courts, in many if not in most cases a burden and a snare, rather than a relief to a debtor. He goes into a court of exclusive jurisdiction and prosecutes his suit with effect to a decree discharging him from his debt, but this only proves a delusion in the construction contended for, by exposing him to have the whole question of its validity to be retried at suit of any fretted creditor, who may choose to harass a despised bankrupt, and thus, after a solemn decree of this court, if he has a thousand creditors, each one of them may sue him, and attack the validity of the decree, it may be many years afterwards, when his witnesses are dead, or he dead, his personal representative who knows nothing of the facts, be sued on the ground that some article of property he was supposed to own was not delivered up in his schedule or some one of the requirements of the law not complied with, and this in the face of the decree of the court adjudging that he had conformed to his duty in all the requirements of the law at the time.

Again, he may have had the very grounds urged against his discharge by one creditor then under the provision of the law, and the matter been decided in his favor, or it may have been attempted to annul his discharge within the two years by another, and the court may have decided in that issue again in his favor, yet in this view another creditor, who had not chosen to prove his claim, might still require him to try the same question over again. Further than this, his discharge may have been, under this view of the law, contested and declared void by a state court, within the two years, and yet on proceedings instituted under the statute by other creditors in the district, having full jurisdiction over the whole question, it may have been adjudged valid, and not subject to be annulled for the causes stated. Which judgment is to be held correct, and which shall relieve him from his embarrassment? None can

tell. In a word this view of the law enables the state courts, having no jurisdiction over the original question, to practically nullify, if they choose, the effect of the adjudication of the courts of the United States, having exclusive jurisdiction over the whole subject, and as we have said is incompatible with the powers granted to the Federal Government to grant a discharge in bankruptcy, because it enables the courts of near forty states to nullify and render it inoperative. Truly, no such construction ought to be given to the Act of Congress unless its terms imperatively demanded it, and we think we have shown that they neither demanded it, nor even fairly admitted of it, when fairly considered and construed. This view of the question is in accordance with well settled principles, applied in all other cases of construction of statutes. The whole bankrupt proceeding is one under a statute of the United States. The powers exercised and the remedies provided, in the language of the Supreme Court of Maine in *Corey* v. *Ripley*, are given by the statute. The impeaching tribunal is specified by the statute, and its mode of proceeding pointed out, and this designation, on well settled principles of interpretation, forms a part of the remedy and excludes all others. For which the court cite numerous cases, which might be added to indefinitely, if deemed necessary.

The case of *Dudley* v. *Mayhew*, 3 N. Y. 11, is a case precisely in point, in which the authorities will be found collected, and the reasoning given, and which settles the principles laid down beyond all dispute. We therefore hold that the discharge granted by the District Court, having jurisdiction over the person and estate of the bankrupt, is conclusive as a bar to all suits commenced in state courts, when interposed by plea as provided in the statute, so far as any attack can be or shall be attempted to be made, by alleging fraud in obtaining it, by withholding assets, or other cases specified in the statute, for which the statute has provided the remedy by authorizing the discharge to be annulled by the proceedings therein pointed out. We have twice before had occasion to examine this question, and have again given it a careful review, because of its importance and the urgency of counsel; and we feel no question as to the soundness of the conclusion at which we have arrived. The result is that the Chancellor's decree on this subject is correct and must be affirmed.

The earlier decisions upon the important question discussed in the foregoing opinion were against the conclusiveness of the discharge. In *Beardsley* v. *Hall*, 36 Conn. 270 (1869), it was held, without much discussion of principles or of the details of the Bankrupt Act, that the discharge could be attacked for fraud in its procurement, in any court where it was set up as a defence. To the same effect are *Perkins* v. *Gay*, 3 Bank. Reg. 189 (1870), in the Superior Court of Cincinnati, and *Batchelder* v. *Law*, 43 Vt. 662 (1871), in which case WHEELER, J. delivered a strongly reasoned opinion, taking the ground that where a debt had been fraudulently omitted from the schedule and the creditor thus prevented from getting notice of the bankruptcy proceedings, he was a stranger to them and not estopped from contesting the discharge.

The later and probably better opinion, however, is in favor of the absolute conclusiveness of the discharge in all actions except the direct proceeding to annul it, given by the act: *Corey* v. *Ripley*, 57 Me. 69; *Ocean Nat. Bank* v. *Alcott*, 46 N. Y. 12; *Oates* v. *Parrish*, 47 Ala. 157, and the unreported case of *Parker* v. *Atwood*, in the Supreme Court of New Hampshire, ante, p. 530. J. T. M.